

1 **LAW OFFICES OF
2 NASH & KIRCHNER, P.C.**

3 P.O. BOX 2310
4 TUCSON, ARIZONA 85702
5 Telephone (520) 792-1613
6 Fax (520) 628-1079
7 Pima County Computer No. 41636
8 State Bar No. 002893
9 walter.nash@azbar.org
10 bkirchner@azbar.org

11 Attorney for defendant David Reid

12 IN THE UNITED STATES DISTRICT COURT

13 FOR THE DISTRICT OF NEW MEXICO

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 CR-05-1849 JH

17 vs.

18 DAVID REID,

19 Defendant.

20 MEMORANDUM REGARDING JAMES HEARING

21 The Defendant David Reid, by his counsel undersigned, hereby
22 submits this Memorandum with regard to the upcoming *James* hearing.

23 It is the understanding of counsel that the function of the hearing is
24 essentially a preemptive Motion *in Limine* on the threshold question
25 regarding co-conspirator statement admission of whether or not there was

1 a conspiracy. The Government has correctly stated that the test at this
2 hearing (as opposed to at the trial) is relaxed and that summary testimony
3 may be utilized with some limits. The primary question to be resolved is
4 whether there was a conspiracy.¹

5 The evidentiary foundation for admission of the statements must still
6 be laid by the Government at trial pursuant to more stringent evidentiary
7 rules and the specific factual context issues (membership in the conspiracy
8 and whether the statements were in furtherance thereof) will not be
9 resolved by, the *James* hearing. Defense counsel retain all objections to
10 the admissibility of these statements at trial even if the Court makes a
11 preliminary finding that, based on relaxed the evidentiary rules at the
12 *James* hearing and the use of summary testimony, there is evidence that a
13 conspiracy existed.

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23 ¹ A related issue what that the conspiracy or conspiracies consisted
24 of. For example, was there one overall conspiracy, or were there multiple
25 conspiracies which would limit the admission of various statements to
those individual conspiracies.

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TUCSON, ARIZONA 85702
Telephone (520) 792-1613

1 RESPECTFULLY SUBMITTED this 30th day of March, 2009
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LAW OFFICES OF
NASH & KIRCHNER, P.C.
P.O. BOX 2310
TUCSON, ARIZONA 85702
Telephone (520) 792-1613

10 BY /S/ Walter Nash
11 WALTER NASH
12 Attorney for Defendant Reid
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1 CERTIFICATE OF SERVICE
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I hereby certify that a true and correct copy of the foregoing pleading
was delivered to opposing counsel and all other counsel of record *via* the
CM/ECF system this 30th day of March, 2009

/s/ Walter Nash

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